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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 NICLAS FOSTER, as Personal Representative
8 of the Estate of MEIKE FOSTER,

9 Plaintiff,

10 v.

11 AMERICAN HONDA MOTOR
12 COMPANY, INC., a foreign corporation, et
13 al.,

14 Defendants.

Case No. C17-1727 RSM

ORDER DENYING MOTION FOR
RECONSIDERATION

15 This matter comes before the Court on the Motion for Reconsideration filed by Plaintiff
16 under LCR 7(h). Dkt. #68. Plaintiff seeks “clarification if not outright correction” to the
17 Court’s recent Order Re: Evidentiary Hearing Regarding Similar Incidents. *Id.* at 1. This prior
18 Order construed the parties’ request for a hearing and pre- and post- briefing as “early motions
19 in limine to address the admissibility of similar car fire incidents involving the vehicle model in
20 question in this case, a 2014 Honda CR-V, and to address the admissibility of testimony from
21 survivors of similar car fires.” Dkt. #66 at 1. Plaintiff now seeks reconsideration of the Court’s
22 rulings as to the admissibility of similar car fire incidents but not as to the admissibility of
23 testimony from survivors of similar car fires.
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26 Motions for reconsideration filed under LCR 7(h) are same day motions. LCR 7(d)(1).
27 “Motions noted under LCR 7(d)(1), except motions for temporary restraining orders, shall not
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1 exceed six pages.” LCR7(e)(1). “Motions for reconsideration are disfavored.” LCR 7(h)(1).
2 “The court will ordinarily deny such motions in the absence of a showing of manifest error in
3 the prior ruling or a showing of new facts or legal authority which could not have been brought
4 to its attention earlier with reasonable diligence.” *Id.*

5 As an initial matter, Plaintiff’s Motion exceeds the applicable page limit by six and a
6 half pages. The Court would typically only consider the first six pages of this filing. However,
7 because the issue before the Court is critical to the upcoming trial the Court has considered the
8 entire filing. The Court will address each of Plaintiff’s requests for clarification.

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10 The Court found that Arndt Incidents 1 through 4 occurred substantially prior to the
11 Foster Fire. Dkt. #66 at 2. However, the Court ultimately concluded that only incidents 1 and
12 3 were “substantially similar,” the applicable standard for the evidentiary issue. *Id.* at 3; *Daniel*
13 *v. Coleman Co. Inc.*, 599 F.3d 1045, 1048 (9th Cir. 2010). As stated in the Court’s Order, this
14 was because these incidents (as well as incidents 5 and 8) “point to organic material trapped in
15 roughly the same area of the vehicle at issue in this case as a potential source of fire.” Dkt. #66
16 at 3. The area at issue in this case was around the exhaust system and secondary catalytic
17 converter. Despite the easier standard for admissibility for incidents occurring substantially
18 prior to the Foster Fire, the Court agreed with Defendants’ analysis that “little is known about
19 the causes of the fire in incidents 2 and 4.” *Id.* The Court was very clear in its Order that
20 “Arendt Incidents 1, 3, 5, and 8 are admissible for the reasons stated above,” but that “[t]he
21 remaining incidents cited by Plaintiff are excluded under FRE 403.” *Id.* at 4.

22
23 Plaintiff feigns confusion as to whether the Court meant to exclude Incidents 2 and 4.
24 *See, e.g.*, Dkt. #68 at 2 (“If excluding incidents 2 and 4 was intentional...”). What Plaintiff is
25 really arguing is that the Court was wrong in finding no substantial similarity between these
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1 incidents and the Foster Fire. *See id.* at 2 n.1. However, by the Plaintiff's own telling, these
2 incidents are similar in that they involved the same model year, engine and exhaust
3 architecture, nature and location of fire, but that they did not involve "direct evidence of
4 organic material as first fuel." *Id.*¹ The Court has already considered all of this in its
5 determination of substantial similarity. The question of how and where the fire started is
6 critical to Plaintiff's claims and the question of substantial similarity; in the Court's judgment
7 these incidents lacked enough information to satisfy the applicable test and FRE 403. The level
8 of analysis offered by the prior Order is consistent with the Court's typical practice on motions
9 in limine. The Court finds no manifest error in its prior ruling.

11 Plaintiff argues "there is confusion as to the Court's exclusion of incidents 6, 7, and 11,
12 incidents which plainly include evidence of organic debris as the initial source fueling a fire,
13 the same defect alleged here (including an admission of same by Honda's own fire
14 investigator)." *Id.* at 2. The Court's prior Order addressed those incidents: "[t]he Court agrees
15 with Defendants that... incidents 6, 7 and 11 have evidence of organic material being the
16 source of the fire, but this evidence is purely speculative." Dkt. #66 at 3. Again, Plaintiff
17 feigns confusion as to whether these incidents were intended to be excluded and argues that the
18 Court "should state the basis for the exclusion and reconsider this decision too." Dkt. #68 at 2.
19 The Court did state the basis for the exclusion—these incidents failed the substantial similarity
20 test due to the evidence of organic material being "purely speculative" and excluded these
21 incidents under FRE 403. The Court reminds Plaintiff that these incidents did not have any
22 statements from a witness saying that the fire was caused by organic material in a similar area
23 as the Foster fire, they had a witness saying he was *asked* if the car was parked near high grass
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28 ¹ Plaintiff goes on to complain that such "evidence might have been found and documented had Honda responded to Geico's notice and invitations to inspect." Dkt #66 at 2 n.1. This concern is not properly before the Court.

1 “as there might have been a mouse nest,” a witness reporting that a firefighter observed a lot of
2 leaves in *the engine block* and concluding that it was a squirrel’s nest, with a report mentioning
3 “light vegetation” as an ignition source, and a witness smelling burning leaves while driving.
4 In each of these incidents a key element was lacking. To the extent that the Court could have
5 ruled otherwise, the Court reminds Plaintiff that he carries the burden of establishing
6 substantial similarity, and that arguments made on a motion for reconsideration that were not
7 made in prior briefing or at oral argument are not a proper basis for the Court to reconsider its
8 ruling unless such arguments could not have been brought to its attention earlier with
9 reasonable diligence. LCR 7(h).
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11 Plaintiff argues that Honda’s failure to investigate these prior incidents serves as
12 evidence to support his claim of negligence; such arguments are not properly raised for the first
13 time in this Motion. LCR 7(h). Plaintiff had three opportunities to raise such arguments—pre-
14 and post- briefing, as well as at oral argument. Plaintiff’s only prior mention of such
15 arguments, the introductory statement in his pre-hearing brief that “the lack of investigation
16 proves negligence on the part of Honda,” is insufficient to shoehorn in Plaintiff’s copious
17 briefing on the subject now.
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19 The Court finds no other basis to reconsider its prior Order. Having reviewed the
20 relevant briefing and the remainder of the record, the Court hereby finds and ORDERS that
21 Plaintiff’s Motion for Reconsideration (Dkt. #66) is DENIED.
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23 DATED this 6th day of December 2019.
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27 RICARDO S. MARTINEZ
28 CHIEF UNITED STATES DISTRICT JUDGE